IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Steve Weinberg,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Civil Action No. 3-06-CV2331-B**
	§	**ECF**
National Football League Players Association, Richard Berthelsen, Gene Upshaw,Tom DePaso, Trace Armstrong, Roger Kaplan, John Collins, Keith Washington, Tony Agnone, Howard Shatsky, and Mark Levin,	§	
	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO NFLPA DEFENDANTS' MOTION
TO COMPEL ARBITRATION AND TO DISMISS THE PETITION

Dockets.Justia.

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STATUTES

9 U.S.C. § 3 12

Pursuant to the Federal Rules of Civil Procedure, Plaintiff Steve Weinberg ("Weinberg") files this Response to NFLPA Defendants' Motion to Compel Arbitration and to Dismiss the Petition filed on January 9, 2007, by Defendants National Football League Players Association ("NFLPA"), Gene Upshaw ("Upshaw"), Richard Berthelsen ("Berthelsen"), Tom DePaso ("DePaso"), Trace Armstrong ("Armstrong"), Mark Levin ("Levin"), Keith Washington ("Washington"), and John Collins ("Collins") (collectively, referring to themselves as the "NFLPA Defendants") and respectfully shows the Honorable Court the following:

I.

PRELIMINARY STATEMENT

Weinberg's claims are not subject to mandatory arbitration because he is not challenging the NFLPA's authority to decertify him or the process by which he was decertified. Rather, Weinberg's claims are based on alleged intentional torts committed by the NFLPA Defendants and others in violation of Texas state law.[1]

II.

ARBITRATION STANDARDS

Although there is a strong federal presumption in favor of arbitration, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."[2] That is because "arbitration is matter of contract"[3] and "arbitrators derive their authority from an agreement between the parties to arbitrate."[4] The presumption in favor of arbitration "cannot be enough to extend the application of an arbitration clause far beyond its intended scope. A decision to arbitrate must be consciously made, for . . . by agreeing to submit disputes to arbitration, a party relinquishes his courtroom rights, including that to subpoena witnesses, in favor of arbitration with all its well-known advantages and drawbacks."[5] When deciding whether to compel arbitration, a court must "determine whether the parties agreed to arbitrate the dispute in question."[6] This requires inquiry into (1) "whether there is a valid agreement to arbitrate between the parties;" and (2) if so, "whether the dispute in question falls within the scope of that arbitration agreement."[7] Where there is no dispute as to the validity of the agreement to arbitrate, the focus is on "the scope of the Arbitration Clause itself and the nature of the dispute at issue."[8]

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[1] *See* Plaintiff's First Amended Petition ("Petition") (doc. 1-5), incorporated herein by reference.
[2] *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).
[3] *Id.*
[4] *Tittle v. Enron Corp.*, 463 F.3d 410, 418 (5^{th} Cir. 2006).

III.

ARGUMENT AND AUTHORITIES

A. The Arbitration Provisions: They Do not Cover Intentional Torts.

The NFLPA Defendants argue that the Court should compel arbitration under three separate arbitration provisions. The first provision is in the Application for Certification as an NFLPA Contract Advisor, and it states the following:

> I [Weinberg] agree that if I am denied certification or if subsequent to obtaining certification it is revoked or suspended pursuant to the Regulations, the exclusive method for challenging any such action is though the arbitration procedure set forth in the Regulations.[9]

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[5] *Fuller v. Guthrie*, 565 F.2d 259, 261 (2d Cir. 1977).
[6] *Id.*
[7] *Id.*.
[8] *Id.* at 419.
[9] Appendix in Support of NFLPA Defendants' Motion and Brief in Support of Their Motion to Compel Arbitration and to Dismiss the Petition ("Defendants' App.") (doc. 14) at 005.

That narrow provision applies only to actions challenging the denial, suspension, or revocation of his NFLPA certification, which is not the case here. Although Weinberg's claims are related to his decertification, he is not challenging his decertification; and, thus, his claims do not fall within this narrow arbitration provision.

The second provision is in the Standard Representation Agreement between Weinberg and Washington, and it states the following:

> Any and all disputes between Player [Washington] and Contract Advisor [Weinberg] involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedure set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors.

This provision is limited in scope to disputes between Weinberg and Washington regarding the meaning, interpretation, or enforcement of their contract, none of which are at issue here. Although the conspirators intentionally interfered with Weinberg's right to receive payments under his representation agreement with Washington (and many others), he is not alleging a claim that requires any interpretation, application, or enforcement of the Washington contract such that it would be subject to mandatory arbitration under this narrow arbitration provision.

The third provision, which receives most of the attention in this brief, is in the NFLPA Regulations Governing Contract Advisors; it states the following:

> This arbitration procedure shall be the excusive method for resolving any and all disputes that may arise from the following:
>
> (1) Denial by the NFLPA of an Applicant's Application for Certification;
> (2) Any dispute between an NFL player and a Contract Advisor [Weinberg] with respect to the conduct of individual negotiations by a Contract Advisor;
> (3) The meaning, interpretation or enforcement of a fee agreement;
> (4) Any other activities of a Contract Advisor [Weinberg] within the scope of these Regulations; and/or

> (5) A dispute between two or more Contract Advisors with respect to whether or not a Contract Advisor interfered with the contractual relationship of a Contract Advisor and player in violation of Section 3(B)(21).[10]

The NFLPA Defendants seek to compel arbitration under sub-part four, speciously arguing that Weinberg's tort claims are based on his "activities . . . within the scope of the Regulations." However, this dispute arises not from Weinberg's activities as an agent but rather from the NFLPA Defendants' intentionally tortious conduct, which caused him life-ruining economic damages; thus, although Weinberg's claims perhaps "relate to" his conduct as an agent, they do not "arise from"[11] his activities within the scope of the Regulations and thus are not arbitrable.[12]

For example, what if Berthelsen had gotten angry at Weinberg because of something he had said or did while representing a client, then punched Weinberg in the face? Would Weinberg's claim for assault be subject to arbitration? That simply cannot be the law; for if it were, Weinberg might just as well have prospectively waived or released claims for intentional torts (which is not allowed under Texas law) because he could never hope to win an intentional tort claim against the NFLPA under its own arbitration system.

Indeed, Weinberg never agreed to arbitrate intentional torts arising out of his relationship with the NFLPA Defendants. The arbitration provisions the defendants rely on are all limited in scope by design. The NFLPA is no stranger to arbitration, and if it had intended a broader arbitration provision, it would have drafted one. But the NFLPA only wanted the parties to be able to invoke the arbitration process under limited circumstances— in cases where it helps to have an arbitrator knowledgeable about sports law (*e.g.*, player contract disputes, agents stealing clients from one another, *etc.*). The parties never intended or agreed to arbitration jurisdiction for intentional torts and conspiracies like the ones here.

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[10] Defendants' App. (doc. 14) at 024.

[11] *See Tracer Research Corp. v. National Envir. Servs. Co.*, 42 F.3d 1292, 1295 (9th Cir. 1994) (noting that arbitration provisions with "arising under" and "arising out of" language are narrower than those with "relating to" language: the "omission of the 'relating to' language is 'significant'"); *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458 (9th Cir. 1983) (same); *Texaco, Inc. v. American Trading Transp. Co.*, 644 F.2d 1152, 1154 (5th Cir. 1981) (noting "restrictive language" of "arising out of" arbitration clause).

[12] *See Tracer*, 42 F.3d at 1295 ("The fact that the tort claim would not have arisen 'but for' the parties' licensing agreement is not determinative. If proven, defendants' continuing use of Tracer's trade secrets would constitute an

B. The Nature of the Dispute at Issue: Weinberg Is Suing For Intentional Torts Under Texas State Law.

Although the defendants attempt to recast Weinberg's claims as a challenge to his decertification, in reality, Weinberg knows that such a challenge would be futile because of the NFLPA's arbitration system and the fairly subjective (*i.e.*, arbitrary) bases upon which the NFLPA can decertify an agent.[13] Instead, Weinberg is suing under Texas state law for intentional torts committed against him by the NFLPA defendants, claims that he never agreed to arbitrate.

In *Texaco, Inc. v. American Trading Trans. Co., Inc.*,[14] a case where Texaco alleged that American's ship had negligently collided with another vessel causing damage to Texaco's dock, the Fifth Circuit examined a similar "arising out of" arbitration provision.[15]

> The Charter provides for arbitration of "any and all differences and disputes arising out of this Charter." The complaint at bar is not the result of a difference or dispute arising out of the Charter. Texaco asserts a delictual claim for damages to its dock. Texaco alleges that the collisions between the vessels and its dock

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independent wrong from any breach of the licensing and nondisclosure agreements. Therefore, it does not require interpretation of the contract and is not arbitrable[.]") (internal citations omitted).

[13] *See* NFLPA Regulations Governing Contract Advisors (the "Regulations") § 2D (allowing decertification for "engag[ing] in any other conduct that significantly impacts adversely on his/her credibility, integrity or competence to serve in a fiduciary capacity on behalf of players."); *id.* § 3(B)(7) (allowing decertification for "[e]ngaging in any other activity which creates an actual or potential conflict of interest with the effective representation of NFL players."); *id.* § 3(B)(13) (allowing decertification for engaging in "other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players.");

[14] 644 F.2d 1152 (5th Cir. 1981).

[15] *Texaco*, 644 F.2d at 1153; *see also Armada Coal Export, Inc. v. Interbulk, Ltd.*, 726 F.2d 1566, 1568 (11th Cir. 1984) (reversing district court for compelling arbitration of intentional tort claims).

> were caused by the fault and negligence of defendants and unseaworthiness of the vessels in enumerated particulars. The existence vel non of the Charter is not dispositive of this claim for delictual damages; the claim as alleged neither arises out of nor depends upon the Charter.
>
> The Charter could have provided for arbitration of all disputes between the parties involving the chartered vessel. Instead the parties chose the more restrictive language limiting arbitration to disputes and differences arising out of the Charter. We find that Clause 55 does not mandate arbitration of Texaco's claim for damage to its dock.[16]

Similarly, the arbitration provision here provides for arbitration of "any and all disputes that may arise from . . . activities of a Contract Advisor within the scope of the Regulations."[17] The crux of Weinberg's claims is that the NFLPA Defendants and others conspired to ruin his life by fraudulently setting him up for decertification and by tortiously interfering with his right to receive income under existing player contracts, among other things. Thus, Weinberg's claims arise from the defendants' tortious conduct, not from his own activities as an agent.

Although it might be argued that this situation would never have arisen but for Weinberg's status as an NFLPA Contract Advisor, arbitration is not mandated by the simple fact that "the dispute would not have arisen absent the existence of a contract between the parties."[18] Regardless of whether Weinberg deserved punishment under the Regulations, the defendants had no right to conspire against him, lie to him, intentionally interfere with his right to receive payments under contracts, or conspire to exclude him from the NFL sports agent marketplace.

Where the conduct alleged would be tortious independent and apart from the agreement between the parties (*i.e.*, is only tenuously related to the contract), the claims based thereon are not subject to arbitration.[19] The court should focus on "whether the tort . . . in question was an immediate, foreseeable result of the performance of contractual duties. Disputes that are not related—with at least some directness—to performance of duties specified by the contract do not count as disputes 'arising out of' the contract, and are not covered by the standard arbitration clause."[20]

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[16] *Id.* at 1154.

[17] Defendants' App. at 024.

In *Guthrie*,[21] a folk singer's alleged tortuous statements against a promoter while the performer was on stage during a concert were not subject to arbitration under a provision that

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[18] *Dusold v. Porta-John Corp.*, 807 P.2d 526, 529-531 (Ariz. Ct. App. 1990) (citing *Armada*, 726 F.2d 1566).

[19] *See, e.g., Fuller v. Guthrie*, 565 F.2d 259, 261 (2d Cir. 1977); ("[A]bsent a clear, explicit statement . . . in the contract directing an arbitrator to hear and determine the validity of tort damage claims by one party against another, it must be assumed that the parties did not intend to withdraw such disputes from judicial authority.") (quoting *Old Dutch Farms, Inc. v. Milk Drivers & Dairy Employees Union*, 359 F.2d 598, 603 (2d Cir. 1966); *Chassereau v. Global-Sun Pools, Inc.*, 611 S.E.2d 305, 306 (S.C. App. 2005) (holding that intentional tort claims did not "arise out of" the agreement between the parties); *Brown v. National Football League*, 219 F. Supp. 2d 372, 388 (S.D.N.Y. 2002) (determining that former player's tort claim against the NFL was not subject to arbitration under the NFL's CBA because it "rests on state law duties to the general public that existed independently of the CBA."); *Greenwood v. Sherfield*, 895 S.W.2d 169, 175 (Mo. App. S.D. 1995) (on a tortious interference claim relating to the sale of a business, the Court stated, "Plaintiffs' action is in no way based on an alleged breach of the Merchant Contract and neither invokes nor needs to invoke the Merchant Contract. Accordingly, we find no reason to conclude that this controversy is one 'arising out of or relating to the existent [Merchant Contract], or any breach thereof' within the meaning of the arbitration clause."); *Radzievsky v. MacMillan*, 170 A.D.2d 400 (N.Y. App. Div. 1991) (holding that an arbitration provision covering any dispute regarding the "decision by the [defendant] to terminate this Agreement for Just Case" did not apply to the plaintiff's claims for loss of business resulting from alleged false representations by the defendants); *Dusold v. Porta-John Corp.*, 807 P.2d 526, 529-531 (Ariz. Ct. App. 1990) ("[W]hen a dispute is not contractual but tortious, courts have shown an increasing reluctance to subject personal injury claims to contractual restrains on judicial resolution."); *id.* (holding that licensee's negligence and products liability claims against licensor did not "aris[e] out of" licensing agreement); *Dean Witter Reynolds Inc. v. Ness*, 677 F. Supp. 866, 870 (D.S.C. 1988) (holding that former employee's claims for false arrest and false imprisonment against former employer did not "arise from" employment and were not subject to arbitration); *see also McDonnell Douglas Finance v. P.A.. Power & Light Co.*, 858 F.2d 825, 833 (2d Cir. 1988) ("Had the parties intended to submit all issues regarding the utility's good faith to an arbitrator, we do not believe they would have chosen a tax counsel [as arbitrator].").

[20] *Telecom Italia, SPA v. Wholesale Telecom Corp.*, 248 F.3d 1109, 1116 (11th Cir. 2001); *see also United Offshore Co. v. Southern Deepwater Pipeline*, 899 F.2d 405, 410 (5th Cir. 1990) (holding that parties should not be required to arbitrate matters not governed by the contract containing the arbitration provision, otherwise, "an arbitrator would not be constrained to resolve only those disputes that the parties have agreed in advance to settle by arbitration, but, instead, would be empowered to impose obligations outside the contract limited only by his understanding and conscience.").

[21] 565 F.2d 259 (2d Cir. 1977).

stated, "the parties will submit every claim, dispute, controversy, or difference involving the musical services arising out of or connected with" the contract to arbitration.[22] The court reasoned that "it is highly unlikely that the parties could have foreseen, no less intended, to provide a forum for wholly unexpected tortious behavior."[23] Similarly, here, there was no way for Weinberg to anticipate that the NFLPA Defendants would conspire against him, intentionally lie to and deceive him, and intentionally interfere with his right to receive income under already negotiated contracts. Thus, Weinberg never agreed to arbitrate such claims under the NFLPA's arbitration system.

In *Old Dutch Farms*,[24] a labor union's alleged tortious interference with an employer's business relationship with a supplier was not subject to arbitration under a provision stating "any and all disputes and controversies arising under this agreement, on in connection with or relating to the application or interpretation of any terms or provisions hereof, or in respect to anything not herein, expressly provided but germane to the subject matter of this agreement shall be submitted for arbitration to an arbitrator."[25] The court reasoned that "the employer is not precluded by the arbitration clause in the parties' collective bargaining agreement from asserting in the district court a claim for tort damages based on the alleged unlawful secondary activity of the union and forced to rely upon arbitration for relief."[26] Similarly, here, Weinberg complains about unlawful secondary activity committed by the NFLPA defendants and others and thus should not be forced to arbitrate under the NFLPA's arbitration system.

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[22] *Guthrie*, 565 F.2d at 260-61.
[23] *Id.*
[24] 359 F.2d 598, 603 (2d Cir. 1966)
[25] *Old Dutch Farms*, 359 F.2d at 600-01.

In *Brown*,[27] a football player who was allegedly injured by a penalty flag thrown during a game could bring tort claims that were not subject to arbitration under the NFL's collective bargaining agreement which contained an arbitration provision that applied to "the interpretation of, application of, or compliance with, any provision of this Agreement, the NFL Player Contract, or any applicable provision of the NFL Constitution and Bylaws pertaining to terms and conditions of employment of NFL players."[28] The Court reasoned that "[s]ince the action will not require interpretation of the CBA, but will instead implicate only ordinary concepts of negligence and assumption of risk," the claims could properly be brought in state court.[29] Similarly, here, Weinberg's claims are based on the violation of Texas state law, not the violation of any provision of the Regulations, and Weinberg's claims can certainly be determined without any analysis of the collective bargaining agreement.

In *Greenwood*, a catalog merchant's claims for alleged tortious interference by a retailer were not subject to arbitration under a provision stating "any controversy or claims arising out of or relating to this Agreement shall be submitted to arbitration." The court reasoned that the plaintiff's claims were "in no way based on an alleged breach of the Merchant Contract and [do not] invoke the Merchant Contract."[30] The same is true here where Weinberg's claims are not dependent on any alleged breach of the Regulations or the CBA and, thus, they are not subject to arbitration under the NFLPA's arbitration system.

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[26] *Id.*
[27] 219 F. Supp. 2d 372 (S.D.N.Y. 2002).
[28] *Brown*, 219 F. Supp. 2d at 389.
[29] *Id.*
[30] *Greenwood*, 895 S.W.2d at 175.

In *Armada*,[31] wrongful attachment and conversion claims were not subject to arbitration under an agreement between the parties to arbitrate "any dispute arising during the execution of the Charter Policy" based on the reasoning that the "tort claims arising from an unlawfully issues writ of foreign attachment" were "wholly apart from the charter policy, unforeseen by the parties as a matter intended for the arbitration forum, and better handled by judges skilled in such issues than by arbitrators trained to resolve contract disputes."[32] The same is true here where the claims of conspiracy by the defendants are based on independently tortious conduct under Texas state law, which were never intended for arbitration and would be better handled by a Texas judge than by a sports arbitrator.

In *Dusold*,[33] it was held that an independent contractor's state law tort claims against the company he worked for were not subject to arbitration under a licensing agreement that stated, "any controversy or claim arising out of, or relating to this agreement, or the breach thereof," were subject to arbitration. The court reasoned that "Dusold alleged that his personal injuries occurred because Port-John failed to warn him of the dangerous and toxic nature of its chemicals and failed to properly instruct him as to their safe use. Dulsold does not contend that these duties to warn or instruct arose out of any contractual obligations of Porta-John under the licensing agreement between them. Rather, Dusold alleges that the duties to warn or instruct arose solely from Porta-John's obligations as a supplier of hazardous materials and such a supplier's duties are controlled by common law tort principles of products liability."[34] The same is true here where Weinberg's claims are based on intentional torts committed by the defendants in violation of the common law, not on duties created by the Regulations.

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[31] 726 F.2d 1566 (11th Cir. 1984).
[32] *Armada*, 726 F.2d at 1568.
[33] 807 P.2d 526, 529-531 (Ariz. Ct. App. 1990).
[34] *Dusold*, 807 P.2d at 531.

In *Chassereau*,[35] claims for intentional torts alleged against a pool construction company were not subject to arbitration under a provision stating "any disputes arising in any manner relating to this agreement . . . shall be subjected to mandatory, exclusive and binding arbitration," based on the reasoning that the plaintiff's claims "for defamation, unlawful use of a telephone, and intentional infliction of emotional distress cannot be considered claims 'arising out of' the contract."[36] Likewise, Weinberg's claims for fraud and tortious interference cannot be considered to "arise from" the Regulations.

In *Ness*,[37] a former employee's claims for intentional torts committed by his former employer were not subject to arbitration under an arbitration in the employment agreement stating "I agree that any controversy between me and any member or member organization . . . arising out of my employment or termination of my employment shall be settled by arbitration[.]"[38] The court reasoned that the plaintiff's claims were "only tenuously related to his employment or its termination" and that "the federal policy favoring arbitration does not compel such a broad reading of the phrase 'arising out of.'"[39] Likewise, Weinberg's claims for intentional torts committed by the defendants do not fall under the Regulations' arbitration provision regarding disputes "arising from" Weinberg's activities under the Regulations.

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[35] 611 S.E.2d 305 (S.C. App. 2005).
[36] *Chassereau*, 611 S.E.2d at 633-34.
[37] 677 F. Supp. 866 (D.S.C. 1988).
[38] *Ness*, 677 F. Supp. at 869.
[39] *Id.* at 869-70.

In light of the foregoing precedent, Weinberg respectfully requests that the Court deny the NFLPA Defendants' motion to compel arbitration.

C. Stay or Dismissal: The Court Should Stay Any Non-Arbitrable Claims.

Where a court compels arbitration of some claims but not others,[40] it is generally appropriate to stay the non-arbitrable claims rather than dismissing them. Accordingly, if the Court believes that the parties have agreed to arbitrate the claims presented in the Petition, Weinberg respectfully requests that the Court stay this action, rather than dismissing it, pending arbitration.

D. Fraud Under Rule 9(b): The Court Should First Determine Whether To Keep This Case, Then Let Weinberg Re-Plead If Necessary.

In the final section of their Motion to Compel Arbitration and to Dismiss the Petition, the NFLPA Defendants argue that Weinberg's fraud and conspiracy to commit fraud claims should be dismissed for failing to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). No doubt the pleadings would have been crafted differently had they been filed in federal court, but the Petition was filed in Texas state court (before being removed to this Court), and it met the pleading requirements of that court. At the moment, however, there are competing motions regarding jurisdiction: the motion to remand argues for jurisdiction in Texas state court, and the motion to compel argues for jurisdiction under the NFLPA's arbitration system. If this Court decides to remand the case, then Weinberg's current pleadings allege fraud with sufficient particularity. If this Court decides to compel arbitration, then Weinberg's current pleadings may suffice, though it is likely that the claims will need to be replead and geared toward an arbitration setting. Thus, the requirements of Rule 9(b) only come into play if this Court decides to keep and exercise jurisdiction over the fraud claims. Accordingly, Weinberg respectfully requests that the Court not dismiss his fraud claims but rather determine where proper jurisdiction lies. If proper jurisdiction is in this Court, then Weinberg respectfully requests that he be allowed to replead his claims to the standards of Rule 9(b) which should be permitted as a matter of right (because it is his first pleading in this Court).

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[40] Under 9 U.S.C. § 3 (2006), a court "shall on application of one of the parties stay the trial . . . until such arbitration has been had" if it is "satisfied that the issue involved in such suit . . . is referable to arbitration under the [arbitration] agreement." "If the issues in a case are within reach of the agreement, the district court has no discretion under § 3 to deny the stay." *See Third Party Advantage Admins., Inc. v. J. P. Farley Corp.*, No. Civ. A 3:06-CV-0534, 2006 WL 3445216 *2 (N.D. Tex. November 27, 2006). The court can, however, at its discretion dismiss the case if *all* of the issues raised before the district court are arbitrable. *See Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 676 (5th Cir. 1999).

IV.

CONCLUSION

Wherefore, premises considered, Plaintiff Weinberg respectfully requests that the Court deny the NFLPA Defendants' motion to compel arbitration and to dismiss the petition and grant all such other relief that the Court deems just and appropriate in equity or at law.

Respectfully submitted,

FRIEDMAN & FEIGER, LLP

By: /s/ S. Wallace Dunwoody IV
Lawrence J. Friedman
State Bar No. 07469300
S. Wallace Dunwoody IV
State Bar No. 24040838

5301 Spring Valley Road
Suite 200
Dallas, Texas 75254
Telephone: (972) 788-1400
Telecopy: (972) 788-2667

ATTORNEYS FOR THE PLAINTIFF STEVE WEINBERG

CERTIFICATE OF SERVICE

On January 31, 2007, I electronically transmitted the foregoing Plaintiff's Response to NLFPA Defendants' Motion to Compel Arbitration and to Dismiss the Petition using the ECF System for filing a Notice of Electronic Filing to those parties registered for ECF in this case. I further certify that the foregoing document was served on all counsel of record by ECF.

/s/ S. Wallace Dunwoody IV
S. Wallace Dunwoody IV